

KEYWORD: Drugs; Personal Conduct; Criminal Conduct

DIGEST: Applicant mitigated personal conduct concerns for his failure to reveal on his 2003 security clearance application (SF 86) occasional drug use during a period of less than a year while in college ending in August 2002. He voluntarily revealed the drug use to an investigator in 2004. The drug use is mitigated for passage of time. Criminal conduct and personal conduct allegations also mitigated through whole person analysis. Clearance is granted.

CASENO: 05-09958.h1

DATE: 05/31/2006

DATE: May 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-09958

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated personal conduct concerns for his failure to reveal on his 2003 security clearance application (SF 86) occasional drug use during a period of less than a year while in college ending in August 2002. He voluntarily revealed the drug use to an investigator in 2004. The drug use is mitigated for passage of time. Criminal conduct and personal conduct allegations also mitigated through whole person analysis. Clearance is granted.

STATEMENT OF CASE

On November 3, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On November 11, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on January 30, 2006. A notice of hearing was issued on February 24, 2006, and a hearing was held on March 16, 2006. One government exhibits and five applicant exhibits were admitted into evidence. One government witness, an investigator, testified. The Applicant and one witness testified on behalf of the Applicant. The transcript was received on April 7, 2006.

FINDINGS OF FACT

Applicant admitted all of the specific SOR allegations. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 26-year-old employee of a major defense contractor working as an engineer/scientist. The issues in the case involve Applicant's occasional use of marijuana during a period of less than a year when he was in college in 2001-2002, and his failure to report that use at Question 27 concerning drug use on his application for a top secret security clearance (SF 86) filed in November 2003. That question requires an affirmative answer if drugs were used in the past seven years after age 16. He did not report the drug use as he feared loss of his clearance that would jeopardize his employment if he revealed the conduct (Tr. 16).

In 2004 Applicant voluntarily gave information to a security investigator with the Office of Personnel Management admitting his drug use during the period alleged. The number of uses was vague ranging from five to ten but no more than a maximum of fifteen. The agent credited him with candor and honesty in his admission and his regret for the drug use and the omission on the SF 86 (Tr. 18). No written statement was taken by the agent.

Applicant has no intention of using drugs in the future and has not done so since 2002. He has no contact with the people with whom he used marijuana while in college. He was married in September, 2005, is active in his church, owns his own home, and is a responsible citizen. His wife is employed in a responsible corporate position and they are planning on children in the near future. His hobbies are sports and reading.

Applicant has two college degrees including a Master's degree in engineering which he received in 2003. He started working on a Ph.D. but has deferred it because of the time demands of his job. While in college he traveled abroad on a fellowship doing medical research on cancer treatment. He has received numerous awards as a student including the outstanding graduate student in his department and for various achievements during the past two years from his employer (Tr. 28 and Exh. E).

Applicant is highly regarded by his supervisors and colleagues who testified for him (Tr. 33-38) or submitted letters of

support (Exh. A pages 1-10) illustrating his work ethic, trustworthiness, and skills in his field. He has held a security clearance since his employment in September 2003.

He very much regrets his conduct in using drugs and his failure to report it on his SF 86.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The government has cited Disqualifying Condition (DC) 1 under Guideline H concerning drug involvement as relevant to the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. The

following definition is provided: "Drug abuse is the illegal use of a drug . . ." (E2.A8.1.1.3). Possible Mitigating Conditions that might be applicable are that the drug involvement was not recent (E2.A8.1.3.1.), and there is a demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.) Applicant has not used drugs since 2002 and is unlikely to use them in the future. The mitigating conditions are applicable.

Because Applicant deliberately falsified his security clearance application, disqualifying conditions under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) were alleged. Under Guideline E, conduct involving untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information. (E2.A5.1.1.) Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a person security application could raise a security concern and may be disqualifying. (E2.A5.1.2.2.)

Under Guideline J, the government alleged Applicant's deliberate falsification of his SF 86 as a violation of 18 U.S.C. § 1001 and the underlying illegal use of drugs as a criminal offense. It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation or knowingly make or use a false writing in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background. ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002). An applicant's failure to accurately admit his drug use would impede a thorough security investigation and affect a final agency decision.

The Government established each of the allegations under Guidelines E and J alleged in the SOR. None of the mitigating conditions listed under Guideline E apply, however I will evaluate his behavior in terms of the "whole person concept." An applicant may mitigate criminal conduct security concerns by demonstrating the factors leading to the violation are not likely to recur (E2.A10.1.3.4.) and there is clear evidence of successful rehabilitation (E2.A10.1.3.6.). I conclude both of these mitigating conditions apply.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes we should view a person by the totality of their

acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant was a young college student when he used drugs. He applied for a security clearance shortly after his college graduation, and he failed to report his drug usage. However, he fully admitted his wrongdoing when interviewed by the OPM investigator. Applicant is an impressive person of talent and strong motivation who holds a responsible position in his company. He has a bright future. His drug use was relatively infrequent and occurred during his college years. He has grown out of it and will not use drugs again. At the hearing, I was impressed by his contrition, his unequivocal acceptance of responsibility for his actions, and his promise that he would be truthful and remain free of drugs in the future. In evaluating Applicant's conduct personal and criminal conduct under Guidelines E and J and the whole person concept, I find for Applicant.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude Applicant's record of conduct justifies a finding that it is clearly consistent with the national interest to grant a security clearance to him.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph 3.a.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard

Administrative Judge